practice for comparable annuity products. Applicants base this representation on an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence and amount of other charges, the nature of the death benefit provided, the guaranteed annuity purchase amounts, the number of transfers permitted without charge and surrenders not subject to a CDSC. The Company represents that it will maintain at its administrative office a memorandum available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made by Contracts and Enhanced Contracts.

5. Similarly, Applicants represent that the mortality and expense risk charges under any Future Contracts issued by the Separate Account or Other Separate Accounts, will be reasonable in relation to the risks assumed by the Company and within the range of industry practice for comparable annuity products. The Company undertakes to maintain at its administrative office a separate memorandum, available to the Commission upon request, setting forth in detail the products analyzed, and the methodology and the results of the analysis relied upon in making these determinations.

6. Applicants acknowledge that the Company's revenues from the CDSC could be less than the Company's costs of distributing the Contracts. In that case, the excess distribution costs would have to be paid out of the Company's general account, including the profits, if any, from the mortality and expense risk charges. In those circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to the distribution of the Contracts. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements mad with respect to the Contracts and Future Contracts will benefit the Separate Account and Other Accounts and the Participants. The basis for that conclusion is, and with respect to Future Contracts will be, set forth in a memorandum which will be maintained by the Company at its administrative office and will be available to the Commission.

7. The Company represents that the Separate Account and Other Accounts will invest only in an underlying mutual fund which undertakes, if it adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not ''interested persons'' of that fund within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

B. Exemption From Section 22(d) of the 1940 Act

1. Pursuant to Section 6(c) of the 1940 Act, Applicants also request that the Commission issue an order to provide exemptive relief from Section 22(d) to the extent necessary to permit the Applicants to waive the CDSC under the Contracts and Future Contracts in the event of the enumerated contingencies triggering the right the make the free withdrawals as described above.

2. Section 22(d) of the 1940 Act prohibits a registered investment company, its principal underwriter, or a dealer in its securities, from selling any redeemable security issued by such registered investment company to any person except at a public offering price described in the prospectus. Rule 6c–8 under the 1940 Act permits registered separate accounts to impose a deferred sales charge. Although Rule 6c–8, unlike Rule 6c–10 under the 1940 Act, does not impose any conditions on the ability of the investment company involved to provide for variations in the deferred sales charges, Rule 6c–8 (again unlike Rule 6c–10) does not provide an exemption from Section 22(d). Applicants recognize that the proposed waiver of the CDSC described in this application could be viewed as causing the Contracts to be sold at other than a uniform offering price.

3. Rule 22d–1 permits the sale of redeemable securities at prices that reflect scheduled variations in, or elimination of, sales loads. That Rule has been interpreted as granting relief only for scheduled variations in front-end sales loads, not deferred sales loads and, therefore, is not directly applicable to Applicants' proposed waiver of the CDSC.

4. Rule 22d–2 exempts registered separate accounts through which variable annuity contracts are offered, their principal underwriters, dealers and sponsoring insurance companies from Section 22(d) to the extent necessary to permit variations in the sales load, administrative charges, or other deductions from the Purchase Payments assessed under such contract, provided that those variations reflect differences in costs or services, are not unfairly discriminatory, and are described adequately in the prospectus. Applicants represent that the elimination or reduction of the CDSC when sales of the Contracts and Certificates result in savings or reduction of sales expenses would be made in reliance on Rule 22d–2. Applicants also represent, however, that the seven proposed contingencies for waiver of the CDSC do not reflect differences in sales costs or services. For that reason, Applicants do not rely on Rule 22d–2 for the requested relief.

5. Applicants submit that the proposed waiver of the CDSC is consistent with the policies of Section 22(d) and the rules thereunder. One such purpose is to prevent an investment company from discriminating among investors by charging different prices to different investors. Applicants represent that, to the extent permitted by state law, the seven proposed contingencies relating to the waiver of the CDSC will be included in all Contracts and Certificates; eligibility for the waiver will be predicated upon the qualification of a Participant under one of the seven contingencies. Therefore, the benefit will not unfairly discriminate among Participants. Applicants submit that the waiver is advantageous to Participants because it provides circumstances in which they may make partial surrenders or a full surrender under their Contracts without imposition of the CDSC. Applicants represent that waiving the CDSC under such circumstances will not result in the occurrence of any of the abuses that Section 22(d) is designed to prevent.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 22(d), 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–26432 Filed 10–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21424/812–9806]

Equitable Capital Partners, L.P., et al.; Notice of Application

October 17, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Equitable Capital Partners, L.P., and Equitable Capital Partners (Retirement Fund), L.P. (the ''Funds''); and Donaldson, Lufkin & Jenrette Securities Corporation (''DLJ'').

RELEVANT ACT SECTIONS: Order requested under section 57(c) of the Act from section 57(a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the Funds to sell shares of the common stock of Lexmark Holding, Inc. (''Lexmark'') (to be renamed Lexmark International Group, Inc.) in an initial public offering in which DLJ is a member of the underwriting syndicate.

FILING DATE: The application was filed on October 10, 1995. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549. The Funds, 1345 Avenue of the Americas, New York, New York 10105. DLJ, 140 Broadway, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are limited partnerships organized under Delaware law, and are business development companies under the Act. The investment objective of each Fund is to provide current income and capital appreciation by investing in privately structured, friendly leveraged buyouts, leveraged acquisitions, and leveraged recapitalizations.

2. The Funds each have five general partners, consisting of four natural persons and one managing general partner, Alliance Corporate Finance Group Incorporated (''Alliance Incorporated''), an indirect, wholly-owned subsidiary of Alliance Capital Management, L.P. (''Alliance Capital''). In 1993, Alliance Incorporated succeeded the original managing general partner, Equitable Capital Management Corporation. At that time, it also became the Funds' investment adviser. The general partner and the limited partners of Alliance Capital are indirect, wholly-owned subsidiaries of The Equitable Companies Incorporated (''EQ'').

3. All of the Funds' individual general partners are not ''interested persons'' of the Funds within the meaning of section 2(a)(19) of the Act (the ''Independent General Partners''). The Independent General Partners perform the same functions as directors of a corporation and, as Independent General Partners, assume the responsibilities that the Act and the rules thereunder impose on the non-interested directors of a business development company.

4. DLJ, a Delaware corporation, is a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., a holding company that, through its subsidiaries, engages in investment banking, merchant banking, trading, distribution, and research. Donaldson, Lufkin & Jenrette, Inc. is a subsidiary of EQ. EQ currently owns 61.5% of the common stock of Donaldson, Lufkin & Jenrette, Inc., but intends to sell a portion of such stock, after which sale EQ would still own more than a majority of Donaldson, Lufkin & Jenrette, Inc.'s common stock.

5. The Funds are shareholders of Lexmark (to be renamed Lexmark International Group, Inc.), a privately-held developer, manufacturer, and supplier of laser and inkjet printers and associated consumable supplies for the office and home markets. The Funds acquired their Lexmark shares on March 27, 1991 jointly with each other and three affiliated persons of their investment adviser: The Equitable Life Assurance Society of the United States (a wholly-owned subsidiary of EQ) and two private investment partnerships, Equitable Deal Flow Fund, L.P. and Equitable Capital Private Income and Equity Partnership II, L.P. (together with the Funds, the ''Equitable Investors''). Alliance Incorporated is the investment sub-adviser to the two private investment partnerships. The 1991 investment was made pursuant to the terms of an SEC order permitting certain co-investments among the Funds and their affiliated persons.[1]

6. The Equitable Investors and other shareholders of Lexmark (together, the ''Selling Shareholders'') intend to sell part of their Lexmark holdings in an initial public offering. The Selling Shareholders collectively own 68,798,805 shares of Lexmark's Class A common stock.

7. The Funds together own 3,262,814 shares, or approximately 4.7% of the shares held by the Selling Shareholders. The Equitable Investors collectively own 8,250,000 shares, or 11.99% of shares held by the Selling Shareholders. The Selling Shareholders also include The Clayton & Dubilier Private Equity Fund IV Limited Partnership (''C&D Fund IV''),[2] which holds approximately 44.7% of the total number of shares held by Selling Shareholders; Leeway & Co., as nominee for the AT&T Master Pension Trust, which holds approximately 16.4% of the total; and Mellon Bank, N.A., as trustee for First Plaza Group Trust, a trust for the benefit of certain employee benefit plans for General Motors Corporation, which holds approximately 16.4% of the total. Other than the Equitable Investors, none of the Selling Shareholders is related to either of the Funds in the manner described in section 57(b) of the Act.

8. As the largest Selling Shareholder, C&D Fund IV has taken the lead in developing the proposed offering, after consultation with Lexmark, which has formed a pricing committee composed of three of its directors.[3] Lexmark selected the proposed lead and co-managers of the U.S. underwriting syndicate. Goldman, Sachs & Co. (''Goldman'') was chosen and approved to act as the lead managing underwriter. Merrill Lynch & Co., Morgan Stanley & Co. Incorporated, DLJ, and Smith

[1] Equitable Capital Partners, L.P., *et al.*, Investment Company Act Release Nos. 16483 (July 15, 1988) (notice) and 16522 (Aug. 11, 1988) (order), *as amended by* Investment Company Act Release Nos. 17894 (Dec. 5, 1990) (notice) and 17925 (Dec. 31, 1990) (order); and Investment Company Act Release Nos. 19426 (Apr. 22, 1993) (notice) and 19482 (May 18, 1993) (order).

[2] The manager of C&D Fund IV is Clayton, Dubilier & Rice, Inc., a private investment firm (''CD&R''), that specializes in leveraged buyouts. In recent years, companies formed by CD&R have acquired divisions from IBM, DuPont, Xerox, and Phillip Morris, C&D Fund IV is a $1.15 billion private equity investment fund established in 1989, which by 1994 had invested in nine companies with total 1994 revenues of several billion dollars.

[3] The three directors are Marvin L. Mann, the Chairman, President, and Chief Executive Officer of Lexmark; Donald J. Gogel, who is also the Co-president of CD&R; and Joseph L. Rice, III, who is also the Chairman and Chief Executive Officer of CD&R. None of the members of the pricing committee is an affiliated person of DLJ.

Barney Inc. were each chosen and approved to act as co-managing underwriters.

9. The Selling Shareholders currently anticipate that in the aggregate they will sell in the offering approximately 15-30% of the shares they now hold. Each of the Selling Shareholders, including the Funds, will have the opportunity to sell shares in the offering on a *pro rata* basis in proportion to its holdings in Lexmark. The Selling Shareholders have agreed not to sell any additional shares of stock they hold for 180 days after the offering.

Applicants' Legal Analysis

1. Applicants request an order under section 57(c) exempting them from section 57(a)(2) to permit the Funds to sell shares of Lexmark common stock in an initial public offering in which DLJ is a member of the underwriting syndicate.[4]

2. Section 57(a)(2) prohibits certain affiliates of a business development company from purchasing any security or other property on a principal basis from the business development company or from any company controlled by the business development company, except securities of which the seller is the issuer. Section 57(b) include any person directly or indirectly controlling, controlled by, or under common control with the business development company.

3. Section 57(c) provides that a person may file an application with the SEC for an order exempting a proposed transaction from one or more provisions of section 57(a) (1) through (3), and that the SEC shall issue an order if the evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned; (b) the proposed transaction is consistent with the policies of the business development company; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. The persons listed in section 57(b)(2) include persons under common control with Alliance Incorporated, the investment adviser to, and managing general partner of, the Funds. Alliance Incorporated is indirectly controlled by EQ. DLJ also is controlled by EQ. Accordingly, DLJ and Alliance Incorporated are under the common control of EQ, and DLJ is an affiliated person of the Funds' investment adviser. In addition, because Alliance Incorporated controls the Funds, DLJ may be deemed to be under common control with the Funds. Thus, under section 57(a)(2), DLJ may not purchase from the Funds securities or other property without first receiving an order under section 57(c).

5. Applicants believe that the proposed transaction satisfies the statutory standards for relief under section 57(c). In this connection, applicants believe that the structure of the proposed transaction will be designed to ensure that the terms of the transaction will be fair and reasonable, will not involve overreaching on the part of any person concerned and will eliminate the possibility of abuses.

6. The proposed transaction will be fair and reasonable to the Funds, because the price of the offering will be determined in arms'-length negotiations among Lexmark, the Selling Shareholders, and Goldman, as representative of the co-managers and the underwriters. Lexmark's pricing committee will take the lead in negotiating with the underwriters the price at which the shares will be sold, and the underwriters' compensation. All of the Selling Shareholders, including the Funds, are sophisticated investors with significant investment expertise and experience, which will ensure that the price to be received by them is fair and reasonable, and that the composition of the underwriting syndicate is in the best interests of the Selling Shareholders.

7. In addition, although DLJ is a co-managing underwriter, Goldman is the lead managing underwriter. In that role, Goldman has responsibility for, among other things, managing the books associated with the underwriting, recommending the price of the shares to the public, recommending the underwriting discount, allocating the shares to the syndicate members, and determining the composition of the institutional participation in the purchase of the shares. DLJ, as a co-managing underwriter, standing alone does not have authority to determine the price of the offering.

8. The proposed transaction would be entirely consistent with the policies of the Funds as recited in their filings with the SEC under the Securities Act of 1933, their registration statements and reports filed under the Securities Exchange Act of 1934, their reports to partners, and with the Funds' prior exemptive orders. The Funds' prospectuses expressly disclosed that one method of liquidating their investments would be through public offerings in which other investors also would sell their holdings. The proposed transaction also would be consistent with the general purposes of the Act.

9. Liquidity in portfolio investments is becoming increasingly important to the Funds and their limited partners. The Funds are now in a liquidation mode and are not making new investments. Selling shares in the proposed offering will provide liquidity not otherwise available to the Funds. Since there now is no public market for Lexmark stock and the shares of Lexmark held by the Funds have not been registered with the SEC, an underwritten offering currently is the only opportunity for sales by the Funds in the public market of Lexmark shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Alliance Incorporated will review the terms of the proposed offering and provide a written report to the Independent General Partners that will set forth Alliance Incorporated's recommendation as to whether each Fund should sell shares in the offering based on Alliance Incorporated's analysis of all factors it deems relevant, including the terms of the offering.

2. The Funds will sell shares in such underwritten offering on the same terms as each other Selling Shareholder. The price of the shares to the public will be the price determined in arm's-length negotiations among Lexmark, the Selling Shareholders and Goldman, as representative of the co-managers and underwriters. The underwriting discount also will be determined in arm's-length negotiations among Lexmark, the Selling Shareholders and Goldman, as representative of the co-manager and underwriters. The terms of DLJ's compensation will be the same as the other co-managers'.

3. A majority of the Independent General Partners must find the underwriting terms and arrangements with respect to the proposed transaction to be fair and reasonable.

4. If Alliance Incorporated, on the basis of its evaluation described above, recommends that a Fund sell shares in the offering, the Individual General Partners shall then determine whether, in their view, it is in the best interests of that Fund to sell shares in that offering. Each Fund shall sell shares in such underwritten offering only if a majority of the Independent General Partners determine that: (a) The terms of

[4] Applicants do not believe that the proposed transactions require relief from sections 57(a)(3) and 57(i), and rule 17d–1, and therefore have not requested that the order include relief under those sections and that rule. Applicants recognize that the SEC expresses no opinion on this issue.

the proposed transaction, including the consideration to be paid to the Fund, are reasonable and fair and do not involve overreaching of the Fund or its partners on the part of any person concerned; (b) the proposed transaction is consistent with the policies of the fund as indicated in its filings under the Securities Act of 1933 and the Securities Exchange Act of 1934, and its reports to its partners; and (c) participation by the Fund in the proposed transaction is in the best interests of the Fund's limited partners.

5. Each Fund will maintain the records required by section 57(f)(3) of the Act as if the transactions were approved by the Independent General Partners under section 57(f) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–26380 Filed 10–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21423; International Series Release No. 871; 812–9804]

Sun Life Assurance Company of Canada and Sun Canada Financial Co.

October 17, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Sun Life Assurance Company of Canada (''Sun Life'') and Sun Canada Financial Co. (''SCF'')

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt finance subsidiaries of Sun Life from subparagraph (b)(3)(i) of rule 3a–5 under the Act so as to permit such finance subsidiaries to rely on the exemptive provisions of rule 3a–5 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit SCF and future wholly-owned finance subsidiaries of Sun Life (''Future Subsidiaries'') to sell preferred stock and debt instruments to finance the business operations of their parent company, Sun Life, and certain subsidiaries of Sun Life.

FILING DATES: The application was filed on October 6, 1995 and amended on October 17, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 7, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. SCF is a Delaware corporation and a finance subsidiary of Sun Life. All of SCF's outstanding shares are owned by Sun Life. Sun Life is a Canadian mutual life insurance company and together with its subsidiaries (the ''Company'') is the largest Canadian life insurance company, based on total consolidated assets under management. The Company's insurance products include individual and group life, health, and disability insurance, annuities, and pensions. The Company also operates in the investment management, banking, trust, and reinsurance businesses. Sun Life owns all of the outstanding stock of Sun Life Assurance Company of Canada (U.S.) (''Sun Life (U.S.)''), a stock life insurance company incorporated in Delaware that issues life insurance policies and individual and group annuities. Sun Life (U.S.) formed a wholly-owned subsidiary, Sun Life Insurance and Annuity Company of New York, that issues annuities and group life and long-term disability insurance in the state of New York. Sun Life (U.S.) has other wholly-owned subsidiaries, including an insurance company and a federally chartered savings bank.

2. SCF was organized to finance Sun Life's business operations, that may include the business operations of Sun Life's subsidiaries. SCF's primary function would be to raise funds through the issuance and offer of its non-voting preferred stock or debt instruments, and to lend all or substantially all (at least 85%) of the proceeds of such offerings to Sun Life or its subsidiaries. The remainder of the proceeds would be invested or held in government securities and other securities permitted by rule 3a–5(a)(6).

3. SCF presently intends to raise funds through a private placement of debt securities (''Notes'') that would be eligible for resale under rule 144A under the Securities Act of 1933 (''Rule 144A Offering''). It is anticipated that the Notes would be sold in a private placement to three investment banks and reoffered by them to qualified institutional buyers in reliance on rule 144A and to institutional accredited investors within the meaning of rule 501 under the Securities Act. Proceeds of the Rule 144A Offering would be used to purchase surplus notes issued by Sun Life (U.S.).[1] Proceeds to Sun Life (U.S.) from that purchase would simultaneously be used to pay off existing Sun Life (U.S.) surplus notes that are currently held by Sun Life. When the contemplated transaction is completed, substantially all of the proceeds from SCF's sale of its Notes would be transferred to Sun Life for use in the Company's business operations, and SCF would hold, in addition to government securities and other securities permitted by rule 3a–5(a)(6), surplus notes of Sun Life (U.S.).

4. The Notes would be direct unsecured obligations of SCF that would be subordinated in right of payment to all present and future indebtedness and liabilities of SCF. The Notes would be guaranteed, on a subordinated basis, by Sun Life. SCF may issue a different type of debt security, or may issue non-voting preferred stock in the future. SCF also may lend funds to or hold the securities of a U.S. bank subsidiary of Sun Life or other subsidiaries excepted from the definition of investment company by section 3(c)(3) of the Act. SCF would limit its financing activities to those that, but for the status of certain of Sun Life's subsidiaries, conform to the requirements of rule 3a–5.

Applicants' Legal Analysis

1. Applicants request an exemption pursuant to section 6(c) from rule 3a–5(b)(3)(i) so as to allow SCF and Future Subsidiaries to rely on the exemptive provisions of rule 3a–5 under the Act.

[1] Surplus notes are a form of debt security permitted by state insurance laws.